

These are the tentative rulings for civil law and motion matters set for Thursday, March 19, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, March 18, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0062530      No. California Coll. Service vs. Heeter, Ryan G., et al**

Defendants' Demurrer to the Complaint is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) The complaint, when read as a whole, alleges sufficient facts to support the first cause of action for open book account and second cause of action for account stated.

Defendants shall file and serve their answer or general denial on or before March 27, 2015.

**2. M-CV-0063104      Buisson, Linda vs. Deloach, Nancy**

Defendant's Demurrer to the Complaint is sustained without leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) In this instance, a review of the complaint shows inconsistent factual allegations that do not lend themselves to an amendment. Plaintiff alleges that she served defendant with a 3-

day notice to quit on December 29, 2014. (Complaint ¶7.) The complaint also alleges that plaintiff's title in the property was not duly perfected until February 4, 2015. (Complaint ¶6.) These allegations show that the 3-day notice was prematurely issued and served. Since no factual allegations may remedy this defect, the demurrer is sustained without leave to amend.

**3. S-CV-0029734 Hilburn, David, et al vs. Lund, John, et al**

The motion for attorneys' fees is continued, on the court's own motion, to April 7, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob. The court apologizes to the parties for any inconvenience.

**4. S-CV-0030458 Regan, Charles, et al vs. LMD Roseville, LLC**

The motion for entry of judgment is dropped from the calendar as no moving papers were filed with the court.

**5. S-CV-0031530 Moore, Gregory M vs. Wells Fargo Bank, N.A. et al**

Defendant's Motion to Bifurcate or Sever Issues for Trial

As the court has previously ruled on this issue on July 24, 2014, it declines to readdress the motion as the request should be directed to the trial judge at the time of trial.

Plaintiff's Motion for Leave to File Amendment to Third Amended Complaint (TAC)

The motion is denied as the amendment will prejudice defendant since it comes so close to the time of trial.

Defendant's Demurrer to the Third Amended Complaint (TAC)

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted as to Exhibits A, F, G, H, and I. The request is denied as to Exhibits B, C, D, and E.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) Defendant challenges only the fifth cause of action for intentional infliction of emotional distress.

The elements of an intentional infliction of emotional distress cause of action include: “(1) extreme and outrageous conduct by the defendant with the intention of causing reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct...” Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community.” (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903.) However, plaintiff has not alleged sufficient facts to show extreme and outrageous conduct so the cause of action fails. The demurrer is sustained without leave to amend as this is the fourth version of plaintiff’s operative complaint and he is still unable to redress the deficiencies in this claim.

**6. S-CV-0032108                      Dodgen, Rita, et al vs. The Fountains, et al**

Plaintiffs’ Motion to Amend Complaint to Add Punitive Damages is denied. Plaintiffs have failed to establish a sufficient basis to support the amendments or a lack of prejudice to the opposing parties.

**7. S-CV-0033972                      Lacy, Carolyn, et al vs. Bank of America, N.A., et al**

The motion for summary judgment is continued, on the court’s own motion, to April 2, 2015 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

**8. S-CV-0034060                      Pourarian, Amitis vs. Natural Tech Landscape, et al**

Defendant’s Demurrer is sustained in part. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff’s allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Plaintiff concedes that the third cause of action for breach of implied warranties should be dismissed. The demurrer is sustained as to this cause of action. As to the remaining causes of action, the claims are sufficiently pled when the first amended complaint is read as a whole.

Defendant shall file and serve his answer or general denial on or before March 27, 2015.

**9. S-CV-0034116                      Global Commodities Trading Group vs. Penny Newman Grain**

The two motions to seal documents are continued, on the court’s own motion, to March 26, 2015 at 8:30 a.m. in Department 40 to be heard in conjunction with the pending motion to seal.

**10. S-CV-0034135                      Cordonnier, Remington, et al vs. Berg, Keith Allen**

Defendant's Motion to Compel a Second Independent Medical Examination is denied as defendant has failed to establish sufficient good cause to warrant a second examination.

**11. S-CV-0034370                      Campbell, Susan, et al vs. Kill, Robert Alan**

The appearances of the parties are required for the hearing on plaintiffs' Motion to Seal Court Files and Records.

**12. S-CV-0035082                      Fireman's Fund Insurance Co. vs. Suryasmita, Christine N.,**

The motion to quash is dropped from the calendar at the request of the moving party.

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